

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

MENTAL HEALTH CENTER OF DENVER

Employer/Petitioner

Case No. 27-UC-225

and

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 105

Union

DECISION CLARIFYING BARGAINING UNIT

On February 19, 2008, Mental Health Center of Denver, herein called “the Employer,” filed a petition under Section 9(b) of the National Labor Relations Act, as amended, seeking to clarify an existing bargaining unit to exclude the following job classifications: Vocational Supervisor, Administrative Assistant II, Pharmacist, and Pharmacy Technician. On March 5 and 6, 2008, a hearing officer held a hearing on the petition. At the hearing, the Employer amended its petition to exclude an additional job classification, Pharmacy Medication Courier. Additionally, the Employer raised issues concerning the status of five allegedly supervisory Administrative Assistant IIs - Judith Johnson, Gloria Nunez, Melisa Bechard, Michelle Flores, and Priscilla Woodward – and two allegedly supervisory Pharmacists - Timothy Georgia and Marilyn Siayap.

The parties agree that the overall issue to be decided is whether the bargaining unit should be clarified to exclude the following five classifications: Vocational Supervisor, Administrative Assistant II, Pharmacist, Pharmacy

Technician, and/or Pharmacy Medication Courier. Additionally, the Employer seeks to have the above-named individuals excluded.

The Employer's asserted bases for seeking to exclude the five classifications from the unit are as follows. With regard to the Vocational Supervisor classification, the Employer contends that the position is supervisory. As for the Administrative Assistant II classification and the three pharmacy classifications, the Employer contends that, historically, they have been excluded from the unit. The Employer also contends that the above-named individuals are statutory supervisors.

The Union's contention is that all of these classifications are part of the unit. The Union submits that the Vocational Supervisors are not statutory supervisors because they do not have authority over personnel who are statutory employees. With regard to the Administrative Assistant II classification, the Union asserts that the classification should be included because the Employer recently transferred the work of unit classifications to it. With regard to the three pharmacy classifications, the Union contends that they have a sufficient community of interest with unit employees to be added to the unit. Based on evidence concerning the supervisory status of Johnson and Nunez, the Union stipulated that they are statutory supervisors. However, in the absence of evidence concerning Bechard, Flores, Woodward, Georgia, and Siayap, the Union did not stipulate concerning the supervisor/employee status of those individuals.

As I discuss below, I conclude that the Vocational Supervisor and Administrative Assistant II classifications are included in the unit, but the Pharmacist, Pharmacy Technician, and Pharmacy Medication Courier classifications are excluded. Also, given that the Administrative Assistant II classification is included, it is necessary to address the Employer's assertion regarding the supervisory status of Johnson, Nunez, Bechard, Flores, and Woodward. In light of the stipulation that Johnson and Nunez are supervisors, I find that they are excluded on that basis. In contrast, I find that the record is not sufficient to establish that Bechard, Flores, and Woodward are supervisors. As I have determined that the Pharmacist classification is excluded from the unit, there is no need to address the Employer's claim that Pharmacists Georgia and Siayap should be excluded on the additional grounds that they are supervisors.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is a Colorado private nonprofit corporation with offices and places of business in Denver, Colorado, where it is engaged in the operation of a community mental health organization. The Employer annually derives gross revenues in excess of \$250,000 and annually purchases and receives at its Denver, Colorado facilities goods valued in excess of \$50,000 directly from points located outside Colorado. The Employer is engaged in commerce within

the meaning of Section 2(6) and (7) of the Act and is subject to the Board's jurisdiction.

3. Service Employees International Union, Local 105, herein called "the Union," is a labor organization within the meaning of Section 2(5) of the Act. The Union represents a bargaining unit including employees of the Employer.

4. Based upon the record, and for the reasons set forth below, the unit will be clarified to include the Vocational Supervisor and Administrative Assistant II classifications and to exclude the Pharmacist, Pharmacy Technician, and Pharmacy Medication Courier classifications. Additionally, it will be clarified to exclude Judith Johnson and Gloria Nunez on the grounds that they are statutory supervisors.

UNIT CLARIFICATION PRINCIPLES

In order to avoid disrupting a bargaining relationship entered into by the parties when they executed a collective-bargaining agreement, the Board's policy generally is to refuse to clarify an existing bargaining unit during the term of an existing contract unless, during the course of bargaining, the party filing a unit clarification petition reserved its right to file. See Edison Sault Elec. Co., 313 NLRB 753, 753 (1994). The Board's rule is based on the rationale that to entertain a petition for unit clarification during the midterm of a contract which defines the bargaining unit would disrupt the parties' collective-bargaining relationship. Id. In other words, the Board has held that to permit clarification during the course of a contract would mean that one of the parties would be able

to effect a change in the composition of the bargaining unit during the contract term after it agreed to the unit's definition. Id.

As the Board stated in Union Elec. Co., 217 NLRB 666, 667 (1975), “[u]nit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category - excluded or included - that they occupied in the past.”

Consistent with the rule set forth in Edison Sault Elec. Co., where a classification historically has been excluded from a bargaining unit, the Board usually refrains from entertaining a midterm request to clarify the unit. See Bethlehem Steel Corp., 329 NLRB 243, 244 (1999). However, there are exceptions to that policy. Id. Thus, the Board will clarify a unit to exclude a classification that historically has been included in the unit where the petitioner has established a statutory basis for exclusion, such as supervisory status. Id. at n.5; Goddard Riverside Community Center, 351 NLRB No. 84, slip op. at 2 (2007). Additionally, the Board will process a unit clarification petition where there is an outstanding grievance alleging that a collective-bargaining agreement covers a classification that the Board finds has been historically excluded from the unit. See Ziegler, Inc., 333 NLRB 949 (2001); Bethlehem Steel Corp., 329 NLRB at 244 n.5. The Board will process such a petition to ensure that a

pending grievance does not result in an incongruous grievance/arbitration award. See Ziegler, Inc., 333 NLRB at 950.

In unit clarification cases, the Board ordinarily applies accretion principles to decide whether inclusion of a new group of employees into an already existing unit is appropriate, based on whether the new group shares an overwhelming community of interest with the existing unit employees and has little or no separate identity. See Beverly Manor-San Francisco, 322 NLRB 968, 972 (1997); Passavant Retirement & Health Ctr., 313 NLRB 1216, 1218 (1994). The Board applies the accretion doctrine restrictively because it deprives employees of the opportunity to express their desires regarding membership in the existing unit. Id. The factors that the Board considers in resolving accretion questions include compensation, work hours, supervision, qualifications, skills, training, job functions, location, work contact, integration, interchange, and bargaining history. The Sun, 329 NLRB 854, 857 (1999).

FACTS

A. Background; the Employer's Operations; the Parties' Collective-Bargaining Relationship; the Present Dispute; the Union's Grievance

The Employer's operation involves providing mental health services to assist patients in the process of recovering from mental illnesses and returning to active and independent functioning. The Employer operates its mental health business at numerous locations throughout the Denver, Colorado area. It has a main administration building and several satellite offices that provide various outpatient, community treatment, residential, and rehabilitative services for its patients. The Employer also operates two in-house pharmacies.

The Union has represented a unit of the Employer's employees since approximately 1993, following the Employer's voluntary recognition of the Union. Since the Employer recognized the Union, the parties have had successive collective-bargaining agreements. The current collective-bargaining agreement has a term from May 15, 2006, through December 31, 2008. The previous collective-bargaining agreement ran from either 2003 or 2004 to 2006.

The current collective-bargaining agreement includes the following recognition clause:

The Employer recognizes the Union as the sole collective bargaining representative for its nonsupervisory employees; excluding supervisors, physicians, guards, and confidential employees.

This agreement shall apply to any other classification(s) which may be established during the term of the Agreement which may perform duties not excluded above. The Employer shall notify the Union of its intention to create a new job classification and the parties shall meet and confer regarding establishing an appropriate pay rate.

It appears that this recognition clause was included in the parties' predecessor collective-bargaining agreement, and likely in all their agreements since the beginning of their relationship.

The classifications specifically included in the collective-bargaining agreement – as set forth in the agreement's Wage and Salary Guidelines - are the following. Classifications that have particular relevance to this case are highlighted in bold.

Mental Health Worker (No Degree)
Janitorial Supervisor
Residential Counselor I
Residential Counselor II (Bachelor's)

Mental Health Therapist I (Bachelor's)
 Vocational Placement Specialist I
 Vocational Counselor I
 Client Trust Fund Advisor
 Clinical Case Manager I (Bachelor's)
 Adjunctive Therapist
 Medical Assistant
 Occupational Therapist Registered
 Clinical Specialist Offsite I
 Mental Health Therapist II (Master's)
 Vocational Counselor II
 Vocational Specialist II
 Psychiatric Nurse I (LPN)
 Clinical Case Manager II (Master's)
 Vocational Project Coordinator
 Clinical Specialist Offsite II
 LCSW/LPC/LMFT
 Clinical Case Manager/LCSW
 Mental Health Therapist/PhD
 Psychologist – Licensed
 Psychiatric Nurse II (RN)
 Psychiatric Nurse III (BSN)
 Mental Health Therapist II (Master's)
 LCSW/LPC/LMFT
 Case Manager Assistant (Trainee –RATC)
 Case Manager Assistant
 Mental Health Aide
 Vocational Counselor Aide
 BAT Case Manager I (No Degree)
 BAT Case Manager II (BA)
 Program Support
 Medical Records Support^{1[1]}
 Mail Room Staff
 Day Porter
 Transportation Coordinator
 General Maintenance Worker
 Mail & Facilities Dispatcher
 Housing Resource Specialist
 Maintenance Mechanic

Additionally, the parties stipulated that two other classifications - On-Site

Apartment Manager and Mail Coordinator - are covered by the agreement. By

^{1[1]} The record sometimes refers to the Medical Records Support classification as Medical Records Technician.

agreement of the parties, the unit includes both professional and nonprofessional employees.

By approximately September 2007, a dispute arose between the parties concerning the unit placement of the five classifications at issue here, none of which are specifically identified in the collective-bargaining agreement. On or about September 25, 2007, the Union filed a grievance under the grievance/arbitration procedure set forth in the parties' collective-bargaining agreement, contending that those classifications should be included in the unit. The parties held a Step 1 grievance meeting in October 2007 and a Step 2 grievance meeting in December 2007. Subsequently, before the grievance proceeded to arbitration, the Employer filed the unit clarification petition in this matter. The Union's grievance has not yet proceeded to arbitration.

B. The Vocational Supervisor Classification

The Employer operates a vocational and rehabilitation program for its patients. The program is focused on rehabilitating users of the Employer's mental health services so that they are prepared to enter the working world, go to school, or pursue some other endeavor. As part of that vocational/rehabilitation program, the Employer employs some of its patients to work on janitorial crews, on donations pickup crews, at a thrift store, or as "peers/mentors" for other patients. More specific information regarding the janitorial crews, the donations pickup crews, the thrift store workers, and the peers/mentors is set forth below. To be eligible for those positions, one must be receiving mental health treatment services, in most cases directly from the Employer. The Employer's primary

reason for employing its patients in those capacities is for them to develop their job skills to promote recovery from their illnesses and to assist others in the rehabilitation process. The Employer's Vocational Supervisors oversee the work of patients/employees who work in those capacities. The patients/employees who work on the janitorial crews, on the donations pickup crews, in the thrift store, and as peers/mentors are not included in the bargaining unit.

The job description for the Vocational Supervisor classification, which is dated December 2006, sets forth a summary of the job functions and a statement of the essential job functions. The job description summarizes the job as follows:

As part of the Vocational Rehabilitation program, provide managerial, administrative, and vocational supervision to a multi-disciplinary team of employees to ensure efficient team operations and job skill development. Coordinate team functions within the organization and community toward enriching the lives and minds of the consumers we serve by focusing on strengths and recovery.

The job description identifies the essential job functions as:

Ensure accuracy, quality, and efficiency standards are met with regard to individual job performance, medical records standards, and general services for consumers.

Promote consumer recovery and effective employee job performance using a strengths-based approach.

Identify, implement and monitor customer service standards to ensure team members are meeting internal and external customer needs and are performing all services in a professional manner.

Develop long and short term goals for the team that are consistent with program and organizational goals.

Train, coach, and evaluate employees to maintain quality within the team, encourage growth and development of employees.

Maintain awareness of diversity and effectively collaborate with culturally diverse employees.

Complete Catalytic Coaching process and provide appropriate coaching and counseling to ensure each employee utilizes his or her skills, performs at satisfactory levels.

Maintain awareness of and support compliance with MHCD policies, procedures, as well as performance standards for each position.

Identify when disciplinary procedures with an employee are appropriate, meet with the employee, and document the disciplinary action in writing.

Assist with the financial planning, budgeting, and forecasting needs of the team. Take corrective action as needed to ensure compliance with established budget constraints.

Participate in the selection and hiring process for internal and external candidates for job vacancies.

Help enforce State, Federal laws, regulations and professional industry standards regarding mental health treatment.

The Vocational Supervisor job description also lists the qualifications and knowledge, skills, and abilities for the job. A Bachelors degree in Social Work, Vocational Rehabilitation, Psychology, or similar field is necessary. Additionally, the job requires five years or more experience in mental health, vocational rehabilitation, social services, or similar field. Included in the knowledge, skills, and abilities are the ability to identify and utilize cultural factors in evaluation and treatment planning, knowledge of clinical supervision and care coordination, ability to accurately diagnose and assess consumers in crisis and non-crisis situations, knowledge of management applications as they relate to the mental health environment, and knowledge of DSM-IV and psychopathology.

Director of Human Resources Jeff Tucker testified about the creation in December 2006 of the Vocational Supervisor classification. He testified that he,

in consultation with other managers, created the Vocational Supervisor classification as a nonunit classification in response to some issues that arose with regard to two unit classifications, Janitorial Supervisor and Vocational Project Coordinator. According to Tucker, a sexual harassment issue arose on a Vocational Project Coordinator's team, a workers compensation issue arose on a Janitorial Supervisor's team, and another workers compensation issue arose with Judy Collins-Godel, the Vocational Project Coordinator who was in charge of the thrift store at that time. Tucker testified that, in light of these issues, he became concerned that the Janitorial Supervisors and Vocational Project Coordinators, over time, had absorbed responsibilities that bore supervisory responsibility. Accordingly, Tucker and other managers decided to give the Janitorial Supervisors and Vocational Project Coordinators a new title and job description - Vocational Supervisor - that would exist outside the bargaining unit. In accordance with its decision to create the new classification, in December 2006 the Employer reclassified the unit Janitorial Supervisors and Vocational Project Coordinators as nonunit Vocational Supervisors.

The evidence indicates that the Employer did not notify the Union about the creation of the new Vocational Supervisor classification, and that there was no meeting or conferral between the parties to establish a pay rate for that classification, as contemplated in the collective-bargaining agreement's recognition clause.

1. Janitorial Crews

The Employer has several janitorial crews that work out of a building known as the “Wishing Well Resource Center,” a location where the Employer frequently has Vocational Counselors who are available to help any patients who are at the building to utilize various programs that are housed there. The janitorial crews consist of patients who are receiving services and treatment from the Employer. As part of their rehabilitation, the crew members hold jobs that consist of cleaning the Employer’s various buildings. The record does not disclose additional detail about the duties and functions performed by the janitorial crews.

There are three Vocational Supervisors - Ibrahim Akindele, Marcus Lyles, and Ron Lavender – who oversee those crews. Beginning approximately December 31, 2006, the Employer classified Akindele, Lyles, and Lavender as Vocational Supervisors and excluded them from the bargaining unit. Before that date, Akindele, Lyles, and Lavender had been classified as Janitorial Supervisors and had been included in the unit. At the time of the hearing, the Employer did not employ anyone in the Janitorial Supervisor unit classification, and Director of Human Resources Jeff Tucker did not expect that the Employer would be having any Janitorial Supervisors in the future. The record does not disclose what specific functions and responsibilities Akindele, Lyles, and Lavender perform as Vocational Supervisors or that they had performed as Janitorial Supervisors. However, the record makes clear that, as nonunit Vocational Supervisors, Akindele, Lyles, and Lavender perform basically the same functions and tasks that they had performed as unit Janitorial Supervisors. Director of Human

Resources Tucker testified that their work as Vocational Supervisors is “very close” to what they had done as Janitorial Supervisors.

2. Donations Pickup Crews and Thrift Store Workers

The Employer also operates a donations program out of its Wishing Well Resource Center. There is a thrift store at that location, which the Employer makes available to its clients free of charge. Donations come in through individuals and corporations. The Employer employs some of its patients to staff that operation. There are approximately eight individuals who sort donations, place them throughout the store, and handle related clerical and clerk duties. Additionally, there are two crews who use trucks to pick up individual and corporate donations and deliver them to the dock at the resource center.

The thrift store employees work part-time, usually from 10:00 a.m. to 2:00 p.m. A store clerk works from 9:00 a.m. to 2:00 p.m. They are paid on an hourly basis. The Employer starts their pay at minimum wage and may give increases depending on individual job performance. Most of the thrift store employees receive minimum wage.

The record does not include any detail about the working conditions for the donations pickup crews, such as their hours.

Beginning on or about December 31, 2006, Judy Collins-Godel was the Vocational Supervisor who oversaw the thrift store operation and Jim Solano was the Vocational Supervisor for the pickup crews. The record does not include detailed information about the specific authority that Collins-Godel and Solano have exercised over their crews.

Before December 31, 2006, Solano and Collins-Godel had been classified as Vocational Project Coordinators, which are unit classifications. When the Employer made them Vocational Supervisors, it removed them from the bargaining unit. The work that they have done as Vocational Supervisors was the same as the work they did as unit Vocational Project Coordinators.

In approximately November 2007, Gary Pakulski took over the thrift store operations from Collins-Godel. In early January 2008, the Employer classified Pakulski as a Vocational Project Coordinator, with responsibility for running the store, and considered him to be in a bargaining unit position. However, in mid-February 2008, the Employer reclassified Pakulski as a nonunit Vocational Supervisor in charge of running the store and supervising staff. Pakulski testified that, as Vocational Supervisor with responsibility for the thrift store, he is responsible for taking applications for store positions, hiring employees, verbally disciplining employees, creating work schedules and making schedule changes in the event of absences, granting employees time off, and evaluating employees during every biweekly pay period. Pakulski did not offer any specifics regarding any of those matters. His testimony concerning all of them encompassed only a few transcript pages. Pakulski also testified that one of the core parts of his role as Vocational Supervisor is to help develop the job skills of those who work in the thrift store and to help them recover from their illnesses through their employment experiences.

3. Peers/Mentors

In its peers/mentors program, the Employer employs users of mental health services as peers and mentors for other Employer patients, to help the other patients develop social skills. Those peers/mentors have progressed through their treatment programs – including the Employer’s treatment programs - to a point at which they can assist other patients. The Employer has had between approximately seven and eleven peers/mentors at any given time. The peers/mentors have weekly contact with other patients to help them get out into the community and to socialize. The peers/mentors also help patients with various issues, such as finding housing and getting to medical and other types of appointments. The basic idea behind the peers/mentors program is for the Employer to have on its staff individuals who directly face mental health issues in their own personal lives, and who therefore may be better able to assist others who are dealing with similar issues.

The peers/mentors typically are unemployed or underemployed, because they have not yet reached full recovery from their illnesses and may have their own continuing mental health issues that make it difficult to hold down jobs. The peers/mentors work on a part-time basis, and they usually get to select their work days and hours, often to coincide with various cultural events such as art shows, that the peers/mentors attend with other patients to promote socializing. Some peers/mentors work as many as 25 hours per week, while others work as few as 5 hours per week. The Employer’s goal is to have the peers/mentors meet face-to-face with their assigned patients once per week. If it is not possible to have a face-to-face meeting, a phone conversation is considered adequate. The

number of patients that a particular peer/mentor has varies from person to person, based primarily on the peer/mentor's physical ability. Some peers/mentors work with as many as six patients, while other peers/mentors work with only two patients. The Employer does not have a list of work rules that are applicable to peers/mentors. In addition to the Employer's goal of having weekly face-to-face meetings, it appears that the only other job requirements are that peers/mentors attend a weekly meeting and annual trainings on confidentiality, strength-based assessments, and "dual relationships" (a term that is not explained in the record). The Employer pays the peers/mentors an hourly wage of \$8.21, but provides no benefits. Some peers/mentors stay in their positions for lengthy periods of time, while others stay for short periods.

Beginning in December 2006, the Employer made Linda Miller the Vocational Supervisor for the peers/mentors program. At that time, the Employer excluded her from the unit. Before that date, Miller had been in a unit classification, Vocational Project Coordinator, doing the same work that she did when the Employer classified her as Vocational Supervisor. Miller testified that, in her capacity as Vocational Supervisor, she was involved in various sorts of personnel actions involving peers/mentors and approximately six unit Vocational Counselors. According to her testimony, her authority over the peers/mentors involved hiring, firing, issuing verbal and written warnings, giving them verbal feedback about their performance and work scheduling, and answering their questions. Miller did not offer any specifics regarding those matters. Like Vocational Supervisor Pakulski, her testimony concerning those issues covered

only a few transcript pages. Also, based on Miller's testimony, her authority over the Vocational Counselors appears to have been limited to answering their questions, without involving more substantial authority such as hiring or firing.

At the time of the hearing, Miller was not a Vocational Supervisor. She became a Program Manager, a nonunit classification, in approximately February 2008. The Employer has been in the process of refilling her Vocational Supervisor slot, but had not yet filled it as of the hearing. In her capacity as Program Manager, Miller was continuing to handle oversight of the peers/mentors and the Vocational Counselors.

C. The Administrative Assistant II Classification

Based on the hearing testimony of Union Steward Anne Wallace, it appears that the Employer has had an Administrative Assistant classification since early in the parties' bargaining relationship in the 1990s. According to Wallace, that classification fell within the unit exclusion for confidential employees, based on the Administrative Assistants' role in assisting high-level executives in confidential matters.

It appears, however, that the duties of the Administrative Assistant classification have changed from what they were initially. The Employer's current job description for the Administrative Assistant II classification – which the Employer created in December 1999 and revised in January 2002 - summarizes the job as “[p]rovid[ing] administrative and clerical support to Program Manager(s) in charge of clinic and/or teams at a site” and “[a]ssist[ing] Program Manager in all aspects of job as needed.” At the hearing, Director of Human

Resources Tucker acknowledged that the Administrative Assistant IIs do not perform confidential functions at this time. The “essential job functions,” as set forth in the Administrative Assistant II job description, include the following:

Organize, compose, and produce letters, memoranda, reports, and other documents, through the use of computer programs, ensuring grammar, spelling, and punctuation are correct. Compose some routine correspondence or reports independently.

Collect program data and maintain data base system; may be required to sort, provide basic analysis, and report data for internal and/or external usage.

Maintain calendars and schedule appointments and meetings.

Take minutes at designated meetings; prepare and distribute as appropriate.

Receive and screen clinic telephone communications.

Schedule consumer appointments with psychiatrists, nurses, and other clinical staff. Collect co-pays if applicable. Input and extract data from the appointment scheduling system.

Coordinate, file, maintain, and update consumer medical records and related data. With all consumer information, take proactive steps to ensure accuracy of records and confidentiality.

Respond to requests for information, ensuring all paperwork is properly executed, and consumer confidentiality is protected.

Maintain other filing systems, databases, and perform data retrieval.

Sort and distribute incoming mail, and prepare outgoing mail.

In Program Manager’s absence, provide for coordination of clinic needs and program. Perform a variety of administrative duties in order to ensure the smooth running of the clinic.

Perform other duties as assigned, based on individual site needs.

Witness testimony establishes that the duties of the Administrative Assistant II classification include staffing the front desk, answering phones, setting appointments, and making phone calls.

It appears that, by the time of the January 2002 revision, the job description for the Administrative Assistant II classification covered duties that had been performed by two unit classifications – Program Support and Medical Records Support. The basic duty of the Program Support unit classification was to staff the front desks at various assigned offices, receive clients, answer phones, schedule appointments, and handle other clerical- and reception-type work. The Medical Records Support unit classification was responsible for taking care of creating charts based on clinical medical reports, pulling charts in response to requests for medical records, and checking that proper releases had been provided. The Administrative Assistant II job description overlaps several of those functions.

At the time of the hearing, there were 20 Administrative Assistant IIs, including the five individuals that the Employer claims are statutory supervisors. At that time, the Employer did not have any employees in the Program Support classification and it had only one employee, Carolina Lopez, in the Medical Records Support classification. Evidently, the Administrative Assistant IIs are performing the duties that the unit Program Support and Medical Records Support classifications previously handled.

The evidence relating to the Employer's filling of the Administrative Assistant II classification is set forth below. As an overview, the available

evidence shows that from April 1998 until the January 2002 job description revision, the Employer placed only two individuals into the Administrative Assistant II classification, and that from the date of that revision to the Fall of 2005 the Employer did not place any employees into that classification. Subsequently, in the Fall of 2005, the Employer placed five individuals into the Administrative Assistant II classification, through three transfers from other classifications and two new hires. Only one of those three transfers – Melanie Olivas - came from the unit Program Support/Medical Records Support classifications. Thereafter, following the commencement of the current contract term in May 2006, the Employer placed many more individuals into that classification, through transfers and new hires. Thus, in the Fall of 2006, the Employer transferred four employees into the Administrative Assistant II classification. All four of those transfers came from the Program Support and Medical Records Support unit classifications. Thereafter, in 2007 and 2008, the Employer hired nine more Administrative Assistant IIs. The details follow.

Judith Johnson was transferred into an Administrative Assistant II position on April 6, 1998. Johnson had started working for the Employer in August 1983 in the Program Support classification.

John Tourjee was transferred into an Administrative Assistant II position on October 30, 2000. Tourjee had been a unit Case Manager at that time of the transfer.

Susana Zarate was hired as an Administrative Assistant II on September 26, 2005.

Melisa Bechard was transferred into an Administrative Assistant II position on November 28, 2005. Bechard had been a unit Case Manager at the time of the transfer.

Michelle Flores was hired as an Administrative Assistant II on November 28, 2005.

Gloria Nunez was transferred into an Administrative Assistant II position effective December 12, 2005. Immediately before that change, her job title had been Administrative Coordinator.

Melanie Olivas was transferred into an Administrative Assistant II position on December 12, 2005. Previously, she had worked in the Medical Records Support classification, a bargaining unit position. Gloria Nunez testified that, when the Employer transferred Olivas from the Medical Records Support classification to the Administrative Assistant II classification, Olivas' duties did not really change and things mostly remained the same.

Savie Baros was transferred into an Administrative Assistant II position in October 2006 from a Medical Records Support unit classification. She had worked in the unit position since August 2006.

Lauren Butcher was transferred to an Administrative Assistant II position on October 23, 2006. Before the transfer, Butcher had worked in the Program Support unit classification.

Sherrie Romo was transferred to an Administrative Assistant II position on October 23, 2006. She had been hired into a Program Support unit position in January 2006.

Toni Walker was transferred to an Administrative Assistant II position on December 18, 2006. She had worked in a unit Program Support position for approximately the previous five years.

Anna Richter was hired as an Administrative Assistant II on March 12, 2007.

Lorena Aguilar was hired as an Administrative Assistant II on July 9, 2007.

Mandy Chestnut was hired as an Administrative Assistant II on October 8, 2007.

Cynthia Ferguson was hired as an Administrative Assistant II on November 5, 2007.

Renee Martinez was hired as an Administrative Assistant II on December 10, 2007.

Jessica Benitez was hired as an Administrative Assistant II on February 4, 2008.

Erica Jolley was hired as an Administrative Assistant II in approximately February 2008.

Priscilla Woodward was hired as an Administrative Assistant II in approximately early March 2008.

Becky Fox also serves as an Administrative Assistant II, but the evidence does not establish when or how she came to serve in that classification.

Upon placing those individuals into the Administrative Assistant II classification, the Employer treated them as being excluded from the bargaining unit. Its personnel action forms reflected that they would be ineligible for Union

coverage. The individuals who transferred into the Administrative Assistant II classification from unit classifications received pay increases of approximately \$2500.

D. The Pharmacist, Pharmacy Technician, and Pharmacy Medication Courier Classifications

The Employer operates two in-house pharmacies. It began exploring the possibility of creating such an operation in approximately May and June 2004, in order to end its previous practice of relying on outside pharmacies located throughout the community. After researching various issues relating to the operation of a pharmacy, the Employer opened its first pharmacy in October 2004, at a location on Colfax Avenue in Denver. In approximately September or October 2004, the Employer hired pharmacy staff to work at that location, including Pharmacists, Pharmacy Technicians, and a Pharmacy Medication Courier. That pharmacy became fully operational in July 2005. In November 2007, the Employer opened its second pharmacy, located at the Employer's main facility, and staffed it with personnel in the same job classifications. The head of the Employer's pharmacy operations is Susan Hahn, the Director of Pharmacy Programs.

At the time of the hearing, the Employer had six Pharmacists, including three full-time and three part-time Pharmacists. The full-time Pharmacists are Timothy Georgia, Marilyn Siayap, and Suzanne Burns. The part-time Pharmacists are William Welch, Thomas Stock, and Kelly Ensminger. Georgia works at the Colfax Avenue pharmacy and Siayap works at the main facility pharmacy. Burns and Ensminger work at the Colfax Avenue pharmacy. Welch

and Stock work at both pharmacies. According to the written job description (which is dated June 2004), Pharmacists handle all aspects of pharmaceutical care, including prescription dispensing, maintaining records, counseling patients, and reviewing drug standards according to professional standards and federal and state legal requirements. The parties stipulated that the Pharmacists are professional employees within the meaning of Section 2(12) of the Act.

At the time of the hearing, the Employer had five Pharmacy Technician positions, including one vacant position. The four current Pharmacist Technicians are Marcia Washington, Susan Kuzas, Patricia Chavez, and Kassandra Tessmer. Washington, Kuzas, and Chavez work at the Colfax pharmacy, while Tessmer works at the pharmacy at the main facility. The job description for the Pharmacist Technician classification (also dated June 2004) describes the duties of that position. Pharmacy Technicians perform a variety of duties to assist Pharmacists. For example, Pharmacy Technicians mix pharmaceutical preparations and labels and fill bottles with prescribed tablets and capsules; enter prescription information into a pharmacy computer system; prepare and dispense medication; receive and store incoming supplies; and maintain inventory records and records of medication and equipment dispensed to patients.

The Employer has one Pharmacy Medication Courier. According to the job description (dated October 2004), the Pharmacy Medication Courier receives, tracks, sorts, and delivers prescriptions from the pharmacies to the various facilities that the Employer operates, such as clinics, residential treatment

facilities, and assisted living facilities. The Pharmacy Medication Courier also keeps records to track delivery of medications. The Pharmacy Medication Courier reports to Keith Barr, who is a manager outside the pharmacy operation and who is responsible for handling other Employer courier and driver services.

The evidence indicates that the Employer did not notify the Union about the creation of the pharmacy classifications, and that there was no meeting or conferral between the parties to establish a pay rate for those classifications. The pharmacy classifications always have been excluded from the unit, and the Union never has sought to bargain over them.

ANALYSIS

A. The Vocational Supervisor Classification

The Employer's request for clarification of the Vocational Supervisor classification – to exclude it from the unit on the grounds that it is supervisory - is properly before the Board. It is clear that the Employer created the Vocational Supervisor classification on or about December 31, 2006, well after the parties' current collective-bargaining agreement went into effect in May 2006. Thus, the classification is a new one that is appropriate for clarification at this time. See, e.g., Union Elec. Co., 217 NLRB 666, 667 (1975) (“[u]nit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement”); Bethlehem Steel Corp., 329 NLRB 241 (1999) (unit clarification proceedings proper where a classification did not exist at the time the parties executed their contract); Bethlehem Steel Corp., 329

NLRB 245 (1999) (same). Additionally, the parties' recognition clause excludes supervisors from the unit, and the Employer is seeking a determination as to whether the Vocational Supervisors fall into that agreed-to exclusion. The Board ordinarily will address supervisory status issues in this context. See, e.g., Western Colorado Power Co., 190 NLRB 564 (1971).

Initially, I find that the evidence shows that the Vocational Supervisor classification performs the same basic functions that previously had been performed by two unit classifications - Janitorial Supervisor and Vocational Project Coordinator. Director of Human Resources Tucker essentially admitted that fact. In such situations, where a new classification is performing the same basic functions that a unit classification historically had performed, that classification is properly viewed as belonging in the unit. See Premcor, Inc., 333 NLRB 1365, 1365-1366 (2001) (citing Brockton Taunton Gas Co., 174 NLRB 969, 971 (1969)); Developmental Disabilities Institute, 334 NLRB 1166, 1166, 1167-1168 (2001). Once it is established that a new classification is performing the same basic functions that a unit classification historically has performed, an accretion analysis is inapplicable. Id. The Board simply will clarify that the new classification is included in the existing unit, without resorting to an accretion analysis. Id. If that case law applies here, it compels the conclusion that the Vocational Supervisors are included in the unit.

However, even though a disputed classification has been historically included in a unit, the Board will determine whether that classification should be excluded on supervisory grounds if the supervisory issue is presented through a

timely-filed unit clarification. See Goddard Riverside Community Center, 351 NLRB No. 84, slip op. at 2 (2007) (citing Washington Post Co., 254 NLRB 168 (1981)). The Board applies that rule because the Act provides specifically for the exclusion of supervisors and the Board usually is required to exclude positions from a bargaining unit where the inclusion of those positions would violate the principles of the Act. Id. Accordingly, even though the Vocational Supervisors historically have been part of the bargaining unit, the Board's procedures require examination of the Employer's contention that the Vocational Supervisors are statutory supervisors who should be excluded.

Here, the Employer contends that the Vocational Supervisors exercise supervisory authority over individuals who work for the Employer as part of its vocational/rehabilitation program. As discussed above, the Employer has three Vocational Supervisors who oversee janitorial crews (Ibrahim Akindele, Marcus Lyles, and Ron Lavender), one Vocational Supervisor who oversees the thrift store (Gary Pakulski), one Vocational Supervisor who oversees the donations pickup crew (Jim Solano), and one Vocational Supervisor who oversees the peers/mentors program (formerly Linda Miller, but vacant at the time of the hearing). As explained further below, I conclude that the Vocational Supervisors are not supervisors within the meaning of the Act.

First, the Employer has not presented sufficient evidence to meet its burden of demonstrating that any of the Vocational Supervisors exercise Section 2(11) authority using independent judgment. See, e.g., Oakwood Healthcare, Inc., 348 NLRB No. 37, slip op. at 9 (2006) (the burden of proving supervisory

status rests with the party asserting that such status exists). In the absence of sufficient evidence, there is not an adequate basis to declare the Vocational Supervisors to be excluded from the unit on the grounds of supervisory status.

With regard to Akindele, Lyles, Lavender, and Solano, the record is devoid of evidence showing that they exercise any Section 2(11) authority with independent judgment. For example, the Employer did not present Akindele, Lyles, Lavender, or Solano to testify about the scope of their authority and/or the degree of judgment that they use in carrying it out. Nor did any of the other witnesses, including Director of Human Resources Tucker, shed any meaningful light on the exact nature of their authority to oversee the janitorial and pickup crews.

With regard to the Vocational Supervisor for the thrift store, Gary Pakulski - the current occupant of that position - testified that he supervises the store staff and that he is responsible for hiring, creating work schedules and making schedule changes in the event of absences, granting employees time off, evaluating employees, and verbally disciplining employees. His testimony, however, did not offer any detail about any of those matters, and it is not possible to determine if he is called on to use independent judgment in those functions. Such general, conclusory evidence is insufficient to establish supervisory authority. See Golden Crest Healthcare Center, 348 NLRB No. 39, slip op. at 5 (2006).

Likewise, the evidence does not establish that the Vocational Supervisor for the peers/mentors program has statutory supervisory responsibility. Former

Vocational Supervisor Linda Miller presented testimony concerning that position. She testified that her authority over the peers/mentors involved hiring, firing, issuing verbal and written warnings, giving them verbal feedback about their performance and work scheduling, and answering their questions. As explained above, however, she did not offer any additional detail. Thus, the evidence concerning the alleged supervisory status of the Vocational Supervisor for the peers/mentors also is general and conclusory, and therefore insufficient to establish supervisory status. Additionally, while the Vocational Supervisor for the peers/mentors also has some role in answering questions for unit Vocational Counselors, such assistance is consistent with nonsupervisory leadman authority. See generally Croft Metals, Inc., 348 NLRB No. 38 (2006) (holding that the lead employees in that case were not statutory supervisors).

Second, I find that the Vocational Supervisors are not statutory supervisors because they do not oversee workers who are statutory employees within the meaning of the Act. The Board has held that a putative supervisor is not a statutory supervisor if the alleged supervisory authority relates to workers who are not statutory employees. See, e.g., North General Hospital, 314 NLRB 14, 14 and n.4 (1994); Fleet Transport Co., Inc., 196 NLRB 436, 438 n.6 (1972). The Union contends that the workers whom the Vocational Supervisors oversee are not statutory employees because their work is done as part of the Employer's vocational/rehabilitation program. See Goodwill Industries of North Georgia, 350 NLRB No. 5, slip op. at 4 (2007) (the burden of proving nonemployee status rests with the party contending that the Act does not cover a category of worker). In

cases dealing with the employee status of persons who work in a rehabilitative setting, the Board looks to the nature of the relationship that the employer has with those individuals. See Goodwill Industries of Denver, 304 NLRB 764, 764-765 (1991); Goodwill Industries of Tidewater, 304 NLRB 767, 767-768 (1991); Brevard Achievement Center, 342 NLRB 982, 983-984 (2004). When the relationship is guided to a great extent by business considerations and may be characterized as a typically industrial relationship, statutory employee status will be found. Id. In contrast, when the relationship is primarily rehabilitative and working conditions are not typical of private sector working conditions, the Board will not find statutory employee status. Id. As discussed further below, I find that the individuals who are subject to oversight by the Vocational Supervisors are not statutory employees and that, accordingly, the Vocational Supervisors are not statutory supervisors.

The record evidence establishes that the relationship between the Employer and the workers for the janitorial crews, the donations and thrift store program, and the peers/mentors is primarily rehabilitative. Thus, the Employer has a substantial program devoted to the vocational rehabilitation of its patients, complete with vocational counseling from trained Vocational Counselors. Eligibility for holding those jobs with the Employer is limited to individuals who are receiving mental health services. The Employer has Vocational Counselors at the Wishing Well Resources Center who are available to assist the employees on the various vocational/rehabilitation crews if necessary. Also, the Employer's job description for the Vocational Supervisor classification indicates that the

employment is primarily rehabilitative, as the job description establishes that Vocational Supervisors must have backgrounds that prepare them specifically to deal with mental health and/or rehabilitation issues and job skills development. From the available evidence, it appears that the jobs are part-time, largely minimum-wage positions, with few demands comparable to those typically encountered in private sector employment. The peers/mentors, for example, are able to determine how many hours to work and when they will work those hours, and their work may involve such functions as visiting an art museum with a patient. Also, there is no evidence to show that there are any substantial production requirements or work rules. While the record reflects that there have been instances of discipline, it appears that such actions are consistent with the Employer's goal of assisting the patients/employees in developing job skills that will support future employment in a more traditional setting. The fact that those employees are not part of the bargaining unit reflects that they have a special status, presumably based on the rehabilitative function of their jobs, that is not shared with the Employer's other employees.

Third, given that I have found that the Vocational Supervisors do not oversee workers who are statutory employees, it is particularly appropriate to apply – as I did above - the Board rule that general, conclusory evidence is insufficient to establish supervisory status. In the context present here, where the putative supervisors oversee workers engaged in a primarily rehabilitative setting, it is even more incumbent on the Employer to furnish detail regarding the alleged supervisory responsibilities, to establish that the responsibility exercised

is based on true supervisory authority rather than on clinical considerations. As discussed above, the Employer did not present evidence with the requisite detail.

In light of my conclusion that the Vocational Supervisors are not supervisors, I find that they are included in the unit, on the grounds that they perform functions that the Janitorial Supervisor and Vocational Project Coordinator unit classifications historically had performed. See Premcor, Inc., 333 NLRB at 1365; Developmental Disabilities Institute, 334 NLRB at 1166.

B. The Administrative Assistant II Classification

As with the Vocational Supervisor classification, I find that the Employer's request for clarification of the Administrative Assistant II classification is appropriately before the Board. Based on the record evidence, I find that the Administrative Assistant II, Program Support, and Medical Records Support classifications have undergone significant changes during the current contract term that commenced on May 15, 2006. Although the Administrative Assistant II classification long had been excluded from the unit based on the confidential nature of the job, Director of Human Resources Tucker acknowledged that, at the time of the hearing, the classification no longer performs confidential functions. Additionally, in the Fall of 2006 - after the current labor agreement took effect - the Employer transferred four employees (Savie Baros, Lauren Butcher, Sherrie Romo, and Toni Walker) from the Program Support and Medical Records Support unit classifications into the Administrative Assistant II nonunit classification. Thereafter, through 2007 and 2008, the Employer hired nine more individuals into the Administrative Assistant II classification. As part of their

duties, those transfers and new hires handle work that Program Support and Medical Records Support employees previously handled. The Employer has not hired or transferred any employees into Program Support and Medical Records Support classifications, and those unit classifications now are virtually unstaffed, with the single exception of one Medical Records Support employee, Carolina Lopez. At this time, the Program Support and Medical Records Support unit classifications exist basically in name only, as empty shells.

In these circumstances, where recent changes have created doubt about the unit placement of employees doing the work formerly associated with the Program Support and Medical Records Support classifications, clarification is warranted. See, e.g., Union Elec. Co., 217 NLRB 666, 667 (1975). Here, clarification will not destabilize the parties' bargaining relationship. Indeed, it may be concluded that the Employer itself has disrupted the parties' relationship, during the term of the existing labor agreement, through its reassignment of unit work to the nonunit Administrative Assistant II classification and concomitant virtual elimination of unit classifications.

In making the determination that there have been recent, substantial changes that warrant clarification, I recognize that, before the current labor agreement took effect, the Employer created and revised a job description for the Administrative Assistant II classification and then placed five individuals into the job, presumably to do the work set forth in that job description. However, the creation/revision of the job description and the hiring/transferring into that classification in the Fall of 2005 did not end the process of change that the

Employer started when it decided to transfer Program Support and Medical Records Support work to the Administrative Assistant II classification. That the Employer made some changes before the current labor agreement went into effect does not alter the fact that it continued to make additional substantial changes more recently, during the term of current agreement. Also, it appears that the Employer's changes had a greater impact after the commencement of the current labor agreement. Thus, after the current agreement went into effect, the Employer transferred four employees from the Program Support and Medical Records Support classifications and subsequently hired nine new Administrative Assistant IIs. At this time, there are no Program Support employees and only one Medical Records Support employee. Before the current contract went into effect, the Employer transferred only one unit employee – Melanie Olivas - from the Program Support and Medical Records Support classifications into the nonunit Administrative Assistant classification, and employees continued to work in those unit classifications until more recently.

As discussed above, Board law holds that, where a new classification is performing the same basic functions that a unit classification historically had performed, the new classification belongs in the unit. See Premcor, Inc., 333 NLRB 1365 (2001); Developmental Disabilities Institute, 334 NLRB 1166 (2001). Based on the available record evidence, described above, I conclude that the Administrative Assistant II classification is included in the bargaining unit because it now exists as a new classification that incorporates the duties of the Program Support and Medical Records Support unit classifications. The fact that

the Employer no longer has any Program Support employees and only one Medical Records Technician bolsters that conclusion. See, e.g., Premcor, 333 NLRB at 1365-1366. While the duties of the Administrative Assistant II classification may be broader than those of the Program Support and Medical Records Support classifications (in that the Administrative Assistant IIs have responsibility, for example, for various reports), the existence of broader duties and responsibilities in the new classification does not negate a finding that it is essentially performing unit work. Id.

In light of the determination that the Administrative Assistant II classification is included in the unit, it is necessary to address the Employer's contention that there are five supervisory Administrative Assistant IIs. The record only supports a finding that two of them, Judith Johnson and Gloria Nunez, are supervisors. As stated above, the parties stipulated that Johnson and Nunez are statutory supervisors. The parties, however, did not stipulate that there are any other supervisory Administrative Assistant IIs. Additionally, the Employer did not introduce any evidence to show that any other Administrative Assistant IIs perform supervisory duties or that any others have lead responsibilities comparable to those performed by Johnson and Nunez. The Employer merely asserted, without presenting specific evidence, that Melisa Bechard, Michelle Flores, and Priscilla Woodward are supervisors because they perform functions similar to those performed by Johnson and Nunez. In the absence of stipulations or specific evidence as to their duties and responsibilities, I cannot conclude that

Administrative Assistant IIs Bechard, Flores, or Woodward are statutory supervisors who should be excluded.

For the foregoing reasons, the unit will be clarified to include the Administrative Assistant II classification, but to exclude Judith Johnson and Gloria Nunez as supervisors.

C. The Pharmacist, Pharmacy Technician, and Pharmacy Medication Courier Classifications

The record establishes that the three pharmacy classifications historically have been excluded from the bargaining unit. The evidence shows that the Employer initially filled its Pharmacist, Pharmacy Technician, and Pharmacy Medication Courier classifications in September or October 2004. Thereafter, the pharmacy classifications never were included in the unit, and the Union never sought to bargain for those classifications. Moreover, there is no evidence that there have been any recent, substantial changes in any of the three pharmacy classifications. The Employer opened a second pharmacy in November 2007, but there is no evidence that the opening of the second pharmacy resulted in a change in the duties of any of the pharmacy classifications. Thus, a finding of historical exclusion is warranted. See, e.g., Bethlehem Steel Corp., 329 NLRB 243, 343-244 (1999) (employees that union sought to add to unit through unit clarification proceedings deemed to be historically excluded, where they had been excluded prior to the existing contract and there were no recent, substantial changes during the term of the contract).

Given that the pharmacy classifications historically have been excluded from the unit, it is appropriate to clarify the unit to confirm that exclusion. As

explained above, under Ziegler, Inc., 333 NLRB 949 (2001), the Board will entertain a petition to clarify a unit to exclude a classification that has been historically excluded, as long as there is an outstanding grievance alleging that a collective-bargaining agreement covers that classification, as there is here. In this case, the Union filed a grievance contending that the pharmacy classifications are included in the unit. That grievance remains pending. In light of that pending grievance, there is a possibility that a future arbitration award could lead to an inconsistent result. Thus, the rationale for clarification set forth in Ziegler applies here.

The Union contends that there cannot be a finding of historical exclusion because it did not know that the pharmacy classifications were employees of the Employer and it thought that the pharmacy personnel could have been contract workers. The Union's contention is unavailing. Even if the Union did not know that the pharmacy staff were employees of the Employer, that unawareness would not negate the fact that, before the current contract went into effect, the parties treated the pharmacy classifications as being excluded. The Board has made clear that it will not permit clarification proceedings to be used to upset agreements between the parties or their established practices concerning unit placement, even if done for mistaken reasons or if the practice was established by acquiescence and not express consent. See Union Electric Co., 217 NLRB 666, 667 (1975). Moreover, such limitations on accretion do not even require the union to have acquiesced in the historical exclusion of a classification from an existing unit. See United Parcel Service, 303 NLRB 326, 327 (1991). It is the

fact of historical exclusion that is determinative. Id.; Teamsters Local 89 (United Parcel Service), 346 NLRB 484, 484 (2006).

To bolster its claim that historical exclusion cannot be found, the Union also contends that the Employer did not adhere to its obligations under the collective-bargaining agreement's recognition clause to give the Union notice of the creation of any new classification and to include the new classification in the unit. However, the Employer's noncompliance with that contractual notice obligation fails to negate the existence of historical exclusion. Additionally, the language of the recognition clause is not dispositive of the issue whether the pharmacy classifications belong in the unit. In unit clarification proceedings, the Board does not look to abstract grants of recognition, such as language included in recognition clauses or unit descriptions, and it does not accrete employees solely because the unit description may call for it. See Coca-Cola Bottling Co., 310 NLRB 844, 844 (1993); Superior Protection, Inc., 341 NLRB 267, 268 (2004). Here, the historical exclusion of the pharmacy classifications weighs against accreting them.

Additionally, with regard to the Pharmacist classification, I conclude that that classification cannot be accreted, due to the Pharmacists' status as professional employees. The Board has held that Section 9(b)(1) of the Act restricts its ability, through unit clarification proceedings, to accrete professional employees into units that include nonprofessional employees, even if the unit already includes some professionals. See Lockheed Aircraft Corp., 155 NLRB 702, 713 (1965); Gibbs & Cox, Inc., 168 NLRB 220, 220 (1967). Section 9(b)(1)

provides that the Board shall not “decide that any unit is appropriate . . . if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit” The Board will not deny professional employees that opportunity for a required vote by accreting them into the unit through unit clarification proceedings. Id.

For the reasons set forth above, the unit will be clarified to exclude the Pharmacist, Pharmacy Technician, and Pharmacy Medication Courier classifications. Accordingly, it is not necessary to decide whether, as the Employer contends, Pharmacists Georgia and Siayap should be excluded on supervisory grounds as well.

ORDER

IT IS HEREBY ORDERED that the bargaining unit is clarified to include the Vocational Supervisor and Administrative Assistant II classifications and to exclude the Pharmacist, Pharmacy Technician, and Pharmacy Medication Courier classifications. Additionally, the unit is clarified to exclude Judith Johnson and Gloria Nunez as supervisors.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board’s Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive

Secretary, 1099 14th Street, NW, Washington, DC 20570. This request must be received by the Board in Washington, DC by **May 20, 2008**.

Dated at Denver, Colorado this 6th day of May, 2008.

Michael W. Josserand, Regional Director

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